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4 UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
6 OAKLAND DIVISION
7

8 DALIA RASHDAN (MOHAMED),

9 Plaintiff,

10 vs.

11 MARC GEISSBERGER,
12 EUGENE LABARRE,
13 AI B. STREACKER,
14 FOROUD HAKIM,
15 NADER A. NADERSHAHI,
16 PATRICK J. FERRILLO, JR.,
17 LEIGH ANDERSON,
JEFF MILES,
DANIEL J. BENDER,
LOLA GIUSTI,
CRAIG YARBOROUGH,
DOES 1-50, AND
UNIVERSITY OF THE PACIFIC,

18 Defendants.
19

Case No: C 10-00634 SBA

**ORDER GRANTING IN PART AND
DENYING IN PART
DEFENDANTS' MOTION TO
DISMISS CORRECTED FIRST
AMENDED COMPLAINT**

Docket 65

20 Plaintiff Dalia Rashdan (Mohamed), a former dental student of the Dugoni School of
21 Dentistry ("Dugoni School") at the University of the Pacific ("the University"), alleges that
22 various instructors and administrators discriminated against her on account of her national
23 origin (Egyptian). The Court previously granted Defendants' motion to dismiss the claims
24 brought against the individual Defendants in the original Complaint, with leave to amend.
25 Plaintiff filed her Corrected First Amended Complaint on January 24, 2011. Dkt. 63.

26 The parties are presently before the Court on the Defendants' Motion to Dismiss
27 Corrected First Amended Complaint and to Enter Final Judgment for the Individual
28 Defendants, pursuant to Federal Rule of Civil Procedure 12(b)(6). Dkt. 65. Having read

1 and considered the papers submitted and the record in this action, and being fully informed,
2 the Court hereby GRANTS IN PART and DENIES IN PART the motion to dismiss, for the
3 reasons that follow. Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local
4 Rule 7-1(b), the Court adjudicates the instant motion without oral argument.

5 **I. BACKGROUND**

6 **A. FACTUAL SUMMARY**

7 The parties are familiar with the facts of this case, which the Court discussed in
8 detail in its prior order. Rashdan v. Geissberger, No. C 10-00637 SBA, 2011 WL 197957
9 (N.D. Cal. Jan. 14, 2011), Dkt. 60. In short, Plaintiff was a full-time dental student at the
10 Dugoni School from 2007 to 2009. While there, she allegedly became the subject of
11 discriminatory treatment, principally by Professor Marc Geissberger, D.D.S., Chair of the
12 Department of Restorative Dentistry.¹ The instant conflict apparently began after Plaintiff
13 was unable to adequately treat a patient at the Dugoni School's dental clinic, allegedly
14 prompting Geissberger to remark that Plaintiff was engaging in "Third World Dentistry."
15 Corrected First Am. Compl. ("FAC") ¶ 29. As a foreign dentist and international dentist,
16 Plaintiff was offended by his remark. Id.

17 Thereafter, Geissberger allegedly conspired with the other individual Defendants to
18 ensure Plaintiff's academic failure. Among other things, Plaintiff accuses Geissberger and
19 others of intentionally causing the alteration of her transcripts to incorrectly reflect that she
20 had not taken or completed certain courses. She also claims Geissberger was responsible
21 for the decision by the Student Academic Performance and Promotions Committee
22 ("SAPPC") on June 10, 2009, which voted 13-0 to recommend that Plaintiff not be certified
23 for graduation. Id. ¶¶ 73-82. Though Plaintiff was allowed to continue at the Dugoni
24 School as an extended student, she alleges that Geissberger and others intentionally made it
25 difficult for her to successfully complete her extension program. Id. ¶¶ 114-130.
26 Concluding that she had "no reasonable possibility of getting her D.D.S. degree from the

27 _____
28 ¹ For simplicity, the Court refers to Dr. Geissberger and the other individual
Defendants by last name only.

Dugoni School,” she submitted a “Request for Absence from School,” which was accepted. Id. ¶¶ 130-31.

B. PROCEDURAL HISTORY

On February 12, 2010, Plaintiff filed the instant action alleging eleven claims for relief for: (1) conspiracy to violate her right to equal protection, in violation of 42 U.S.C. § 1985(3); (2) violation of Title VI of the Civil Rights Act of 1964 (“Title VI”), 42 U.S.C. § 2000d; (3) violation of the Unruh Act, Cal. Civ. Code § 51; (4) breach of implied contract; (5) breach of the implied covenant of good faith and fair dealing; (6) defamation; (7) tortious interference with a contract or advantageous business relationship or expectancy; (8) intentional infliction of emotional distress (“IIED”); (9) fraud; (10) negligent misrepresentation; and (11) negligence. As defendants, Plaintiff named Dr. Geissberger and Dr. Ferrillo, as well as the University, Dr. Eugene LaBarre, Dr. Ai B. Streacker, Dr. Foroud Hakim, Dr. Nader H. Nadershahi, Dr. Leigh Anderson, Dr. Jeff Miles, Mr. Daniel J. Bender, Dr. Lola Giusti, and Dr. Craig Yarborough. Plaintiff seeks compensatory and punitive damages and injunctive relief.

Defendants moved to dismiss the claims against the individual Defendants; namely; the first claim for conspiracy under § 1985(3), the second claim under Title VI, the sixth claim for defamation, the seventh claim for tortious interference with contract, the eighth claim for IIED and the eleventh claim for negligence. Dkt. 10. On January 14, 2010, the Court issued its order granting Defendants’ motion in its entirety. Dkt. 60. The Court dismissed Plaintiff’s seventh claim for tortious interference and eighth claim for IIED with prejudice. However, the Court granted Plaintiff leave to amend her claims under § 1985(3), Title VI and for defamation, to correct the deficiencies set forth in the Court’s ruling. The Court also granted Plaintiff leave to amend to substitute the University as a defendant in her eleventh cause of action for negligence. The Court warned that “[i]n the event Plaintiff fails to file an amended complaint within [the specified] time-frame, the § 1985(3), Title VI, defamation and negligence claims will be deemed dismissed with prejudice.” Rashdan, 2011 WL 197957, at *12.

On January 24, 2011, Plaintiff timely filed her First Amended Complaint, Dkt. 61, which she then replaced with a Corrected First Amended Complaint (“FAC”) on the same day, Dkt. 63. Plaintiff did not amend her second claim under Title VI, but did purport to amend the first claim under § 1985(3), sixth claim for defamation and seventh claim for negligence.² Defendants now move to dismiss the first and sixth claims. In her opposition, Plaintiff does not oppose dismissal of her first claim, but challenges the dismissal of certain aspects of her sixth claim for defamation.

II. LEGAL STANDARD

Rule 8 of the Federal Rules of Civil Procedure requires that a complaint contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). If a complaint fails to satisfy Rule 8, it “must be dismissed” under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). To survive a motion to dismiss, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” Id. The pleadings must “give the defendant fair notice of what . . . the claim is and the grounds upon which it rests.” Erickson v. Pardus, 551 U.S. 89, 93 (2007) (internal quotation marks omitted). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” Twombly, 550 U.S. at 555.

When considering a Rule 12(b)(6) motion, a court must take the allegations as true and construe them in the light most favorable to plaintiff. See Knieval v. ESPN, 393 F.3d 1068, 1072 (9th Cir. 2005). However, “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, --- U.S. ---, 129 S. Ct. 1937, 1949-50 (2009). “While legal conclusions can provide the complaint’s framework, they must be supported by factual

² Since Plaintiff did not amend her claim under Title VI, that claim is deemed dismissed with prejudice.

1 allegations.” Id. at 1950. Those facts must be sufficient to push the claims “across the line
2 from conceivable to plausible[.]” Id. at 1951 (quoting Twombly, 550 U.S. at 557). In the
3 event dismissal is warranted, it is generally without prejudice, unless it is clear the
4 complaint cannot be saved by any amendment. See Sparling v. Daou, 411 F.3d 1006, 1013
5 (9th Cir. 2005); Gompper v. VISX, Inc., 298 F.3d 893, 898 (9th Cir. 2002).

6 **III. DISCUSSION**

7 **A. 42 U.S.C. § 1985(3)**

8 The Court previously dismissed Plaintiff’s first claim under § 1985(3) based on her
9 failure to allege facts sufficient to show state action. Rashdan v. Geissberger, No. C 10-
10 00637 SBA, 2011 WL 197957, at *7 (N.D. Cal. Jan. 14, 2011). In her opposition to the
11 instant motion to dismiss, Plaintiff “concedes that she did not plead state action in the
12 [FAC],” and therefore, proposes that “the Court should GRANT Defendants’ Motion to
13 Dismiss the [FAC] as to the § 1985(3) claim without leave to amend.” Pl.’s Opp’n at 4, 10,
14 15. At the same time, however, Plaintiff indicates that she intends to seek leave to amend
15 her FAC “to include a § 1985(3) claim for conspiracy to deprive Plaintiff of her rights
16 under 42 U.S.C. § 2000d et seq. and California Civil Code § 51,” which allegedly obviates
17 the need to show of state action. Id. at 14-15. To that end, Plaintiff has filed a motion for
18 leave to amend, which is noticed for hearing on July 12, 2011. Dkt. 70. Therefore, in
19 accordance with Plaintiff’s agreement that her first claim, as pled, is subject to dismissal,
20 the Court GRANTS Defendants’ motion. The Court will consider the viability of
21 Plaintiff’s alternate theory of liability under § 1985(3) upon adjudication of her motion for
22 leave amend. To expedite matters, the Court will accelerate the briefing schedule
23 applicable to said motion, as set forth below.

24 **B. DEFAMATION**

25 The elements of a state law claim for defamation are (1) a publication that is
26 (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes
27 special damage. Cal.Civ.Code §§ 45, 46; Taus v. Loftus, 40 Cal.4th 683, 720 (2007).
28 Plaintiff originally brought her defamation claim against Defendants Geissberger, Hakim,

1 Labarre, Ferrillo, Streacker, Anderson, Miles, Giusti and Bender. In her FAC, Plaintiff has
2 alleged her revised defamation claim only against Geissberger, Labarre and Giusti.

3 Although the FAC alleges several incidents as the bases for Plaintiff's defamation
4 claim against these Defendants, Plaintiff now acknowledges in her opposition that certain
5 of those allegations are infirm and are subject to dismissal. Pl.'s Opp'n at 13-14 ("Plaintiff
6 not having made defamatory statements of fact in the [FAC] regarding statements
7 Defendants GEISSBERGER and LABARRE made to the SAPPC, the Court should
8 GRANT their motion to dismiss as to allegations in ¶ 78 and ¶ 80 in the [FAC].").
9 However, Plaintiff contends that her defamation claim against Defendant Geissberger,
10 Labarre and Giusti, as set forth in paragraphs 43-46 and 103 of the FAC, is viable and
11 should not be dismissed. *Id.* at 13. The Court therefore focuses its analysis on the disputed
12 aspects of Plaintiff's defamation claim.

13 1. Statements Relating to Transcripts

14 Plaintiff's revised defamation claim against Geissberger, Labarre and Giusti alleges
15 that they were involved in the alteration of her transcripts. She alleges, on information and
16 belief, that:

17 43. Defendant BENDER altered her official transcript to
18 indicate that she received the grade INC (incomplete) for RS
19 379 Clinical Restorative Dentistry III based on Defendant
GEISSBERGER's false statement of fact that she had not
completed RS 379 Clinical Restorative Dentistry III.

20 44. Defendant BENDER altered her official transcript to
21 indicate that she had not taken RP 396 Clinical Removable
22 Prosthodontics based on Defendant *LABARRE's false statement*
of fact that she had not taken RP 396 Clinical Removable
Prosthodontics.

23 45. Defendant BENDER altered her official transcript to
24 indicate that she had not taken DP 317 Patient Management &
25 Production III based on Defendant *GIUSTI's false statement of*
fact that she had not taken DP 317 Patient Management &
Production III.

26 46. Defendant BENDER altered her official transcript to
27 indicate that she had not taken DP 320 Preparation for State
28 Licensure *based on a false statement of fact made by one or*
more DOES 1-50 that she had not taken DP 320 Preparation
for State Licensure.

FAC ¶¶ 43-46 (emphasis added).

1 Defendants contend that the foregoing allegations are deficient on the ground that
2 they “fail to specify *any statement* by Dr. Geissberger, Dr. Labarre and/or Dr. Giusti made
3 to Dr. Bender (or any third party) that caused Dr. Bender to make a change to the
4 transcript.” Defs.’ Mot. at 12 (emphasis in original). This contention lacks merit. Where
5 the defamation claim is based on slander, it is sufficient to allege “the substance of the
6 defamatory statement.” Okun v. Superior Court, 29 Cal.3d 442, 458 (1981).³ Here, the
7 allegedly false statement of fact by Defendants is that Plaintiff did not take or complete the
8 dental course when, in fact, she had done so. In addition, the FAC alleges to whom the
9 purportedly slanderous statements were made; to wit, Defendant Bender. This is sufficient
10 to provide Defendants with fair notice of the basis of the claims being alleged against them.
11 Twombly, 550 U.S. at 569-70.⁴

12 As an ancillary matter, Defendants contend that “[t]he Court has already rejected
13 these very allegations on the ground that Plaintiff’s allegations were entirely speculative,
14 and not factual[.]” Defs.’ Mot. at 12. Defendants misapprehend the Court’s ruling.
15 Though Plaintiff had made reference in her opposition to Defendants’ earlier motion to
16 dismiss as to Geissberger, Labarre and Giusti’s allegedly false statements in connection
17 with her transcripts, the Court noted that those allegations were *not* actually in the
18 Complaint. Rashdan, 2011 WL 197597, at *9. As for the allegations that were, in fact,
19 presented in the pleadings, the Court noted that Plaintiff had merely speculated “that either
20 Bender altered the transcript or that Geissberger, Labarre and Giusti were somehow
21 involved” and that “[i]n the absence of any particular statements made by these
22 individuals, or any showing of publication of such statements to a third party, Plaintiff
23 cannot proceed on her defamation claim” Id. (emphasis added). In her FAC, Plaintiff
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25 ³ Although the Court applies federal law pleading standards in assessing the
26 sufficiency of a pleading, the standard for dismissal in state court “is highly relevant.”
Church of Scientology of Calif. v. Flynn, 744 F.2d 694, 696 n.2 (9th Cir. 1984).

27 ⁴ Defendants also assert that Plaintiff must allege the time and place of the
28 defamatory statement, but fail to cite any legal authority establishing that such facts must
be pled under Rule 8.

has now expressly alleged that these Defendants falsely reported that Plaintiff either did not take a particular course or had not completed it successfully. As such, Plaintiff has adequately alleged the substance of the allegedly defamatory statement for pleading purposes.

2. Statements Regarding Plaintiff's Dental Work

In addition to the above, Plaintiff alleges that Giusti falsely informed Labarre that Plaintiff received outside assistance in performing her last denture case when, in actuality, she completed such work on her own. This claim is set forth in Paragraph 103, which avers:

103. On June 15, 2009, Defendant GIUSTI told Plaintiff RASHDAN *that Defendant LABARRE had conveyed to Defendant GIUSTI* that Plaintiff RASHDAN's last complete denture case was not completed by her, but rather that the work was done "by an outside lab or [Plaintiff's] mother."

Plaintiff RASHDAN did her last complete denture case by herself, and had not had the work done by an outside lab, nor by her mother.

FAC ¶¶ 43-46, 103 (emphasis added).

Defendants first argue that Plaintiff cannot predicate a defamation claim on a statement communicated *to her*. Defs.' Mot. at 13. However, Defendants misinterpret Plaintiff's allegations, which clearly allege that this claim is based on a statement allegedly made *by Labarre to Giusti*. Equally erroneous is Defendants' assertion that the statement at issue is one of opinion as opposed to fact. Plaintiff alleges that Labarre told Giusti that *she did not personally complete her last denture case on her own*—which plainly is a statement of fact, not opinion. The Court concludes that Defendants' arguments for dismissing Plaintiff's defamation claim, as set forth in Paragraphs 43-46 and 103 of the FAC are unavailing.

1 **IV. CONCLUSION**

2 For the reasons set forth above,

3 **IT IS HEREBY ORDERED THAT:**

4 1. Defendants' Motion to Dismiss Corrected First Amended Complaint and to
5 Enter Final Judgment for the Individual Defendants is GRANTED IN PART and DENIED
6 IN PART, as set forth above. The motion is GRANTED as to Plaintiff's first claim for
7 violation of 42 U.S.C. § 1985(3) and sixth claim for defamation, insofar it is premised on
8 statements made to the SPCC, and is DENIED in all other respects.

9 2. To expedite resolution of Plaintiff's Motion for Leave to Amend (Dkt. 70),
10 the Court revises the briefing schedule specified in Civil Local Rule 7-3 as follows:

11 a. Any opposition to the motion, which shall be limited to seven (7)
12 pages, shall be filed by no than May 20, 2011. **The failure to timely file an**
13 **opposition may be construed as a consent to the granting of the motion.**

14 b. Any reply, which shall be limited to four (4) pages, shall be filed by no
15 later than May 27, 2011.

16 c. The Court, in its discretion, may decide the motion without oral
17 argument, pursuant to Federal Rule of Civil Procedure 78(b), in which case no
18 appearance for the motion will be necessary. The parties are advised to check the
19 Court's website to determine whether a court appearance is required.

20 3. The Case Management Conference currently scheduled for May 10, 2011, is
21 CONTINUED to May 19, 2011 at 2:30 p.m. Prior to the date scheduled for the
22 conference, the parties shall meet and confer and prepare an updated Joint Case
23 Management Conference Statement. The joint statement shall be filed no later than two (2)
24 days prior to the conference and shall comply with the Standing Order for All Judges of the
25 Northern District of California and the Standing Order of this Court. **The updated**
26 **statement must include the parties' suggestions for scheduling this case.** Plaintiff shall
27 be responsible for filing the statement as well as for arranging the conference call. All
28

1 parties shall be on the line and shall call (510) 637-3559 at the above indicated date and
2 time.

3 4. This Order terminates Docket 65.

4 IT IS SO ORDERED.

5 Dated: May 6, 2011


SAUNDRA BROWN ARMSTRONG
United States District Judge